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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 JAE JEONG LYU,
12 Petitioner,
13 v.
14 ROBERT LUNA,
15 Respondent.
16

Case No. 2:23-cv-08178-JVS-KES

ORDER TO SHOW CAUSE WHY
PETITION SHOULD NOT BE
SUMMARILY DISMISSED

17 I.
18 INTRODUCTION
19

20 In September 2023, Jae Jeong Lyu (“Petitioner”) filed a Petition for Writ of
21 Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. (Dkt. 1
22 (“Pet.”).) In November 2023, the Petition was dismissed due to Petitioner’s failure
23 to pay the initial filing fee. (Dkt. 4.) On December 1, 2023, the Court received
24 Petitioner’s \$5 filing fee, prompting the reopening of his case. (Dkt. 5, 6.)

25 Public records show from Los Angeles Superior Court (“LASC”) case
26 number BA439082 show the following.¹ Petitioner worked as a massage therapist,

27
28 ¹ The Court has issued a separate minute order taking judicial notice of
public records relevant to this case and attaching any public records referenced in

1 and, in 2015, he was charged with four crimes arising out of a sexual assault of a
2 massage client, Vanessa S.: sexual battery involving an unconscious person,
3 forcible sexual penetration, forcible oral copulation, and failing to register as a sex
4 offender. After a jury convicted him of all four charges, the trial court sentenced
5 him to a total term of 17 years.

6 On appeal, the California Court of Appeal reversed his conviction for
7 forcible sexual penetration based on the trial court's failure to instruct the jury on
8 lesser included offenses. People v. Lyu, No. B272022, 2017 Cal. App. Unpub.
9 LEXIS 3903, 2017 WL 2438276 (June 6, 2017). On October 18, 2017, the LASC
10 resentenced Petitioner to a total term of 12 years in state prison followed by 6
11 months and 364 days in county jail.

12 According to Petitioner, he has been in the custody of the Los Angeles
13 County Sheriff at the Men's Central Jail in Los Angeles ("MCJ") since April 2023.
14 (Pet. at 2-3.) His anticipated release date is January 5, 2024. (Id.) The Petition
15 raises multiple claims about the conditions of his confinement at MCJ.

16 When a new petition for writ of habeas corpus is filed, the Court "must
17 promptly examine it," and "[i]f it plainly appears from the petition and any attached
18 exhibits that the petitioner is not entitled to relief in the district court," the Court
19 "must dismiss the petition...." Rule 4, Rules Governing Section 2254 and 2255
20 Cases.² However, "a petition for habeas corpus should not be dismissed without
21 leave to amend unless it appears that no tenable claim for relief can be pleaded were
22 such leave granted." Henderson v. Johnson, 710 F.3d 872, 873 (9th Cir. 2013)
23 (quoting Jarvis v. Nelson, 440 F.2d 13, 14 (9th Cir. 1971) (per curiam)).

24
25 this order that are not available on Lexis.

26 ² These rules are available on the Court's website at:
27 [https://www.uscourts.gov/sites/default/files/rules-governing-section-2254-and-](https://www.uscourts.gov/sites/default/files/rules-governing-section-2254-and-section-2255-proceedings.pdf)
28 [section-2255-proceedings.pdf](https://www.uscourts.gov/sites/default/files/rules-governing-section-2254-and-section-2255-proceedings.pdf).

1 For the reasons stated below, it appears that the Petition fails to state a claim
 2 for federal habeas relief. As to all claims but Claim Four, it further appears that the
 3 pleading defect cannot be cured by amendment, because the claims are civil rights
 4 claims, not habeas claims. Nevertheless, the Court will give Petitioner an
 5 opportunity to respond to this Order and explain why he believes the Petition states
 6 a claim for habeas relief.

7 II.

8 CLAIMS FOR RELIEF

9 Claim One: Petitioner alleges that MCJ's Inmate Reception Center ("IRC")
 10 engages in medical malpractice and should be "shut down immediately." (Pet. at
 11 3.) He alleges that IRC staff handcuffed him to a chair when he asked reasonable
 12 questions and confiscated a two-month supply of his medication. (Id.)

13 Claim Two: Petitioner alleges that MCJ must change its blankets to sheets to
 14 protect inmates from getting tuberculosis "because of the dust of cotton." (Id. at 4.)

15 Claim Three: Petitioner alleges that MCJ must replace hot pots with "self-
 16 filled water hot pots." (Id. at 5.) Petitioner is concerned that some inmates use the
 17 hot pots to heat leftover food in plastic bags, and the heated plastic "releases
 18 chemical hormones which causes cancers." (Id.)

19 Claim Four: Petitioner alleges that MCJ must correct its "inmate records" to
 20 reflect the correct date of his conviction. (Id.)

21 Claim Five: Petitioner alleges that MCJ must allow inmates to have a mirror
 22 and clock. He complains, "In dorms mirrors are installed but never maintained...."
 23 (Id.)

24 Claim Six: Petitioner alleges that MCJ must stop "extorting" inmates by
 25 charging such high prices at the commissary. (Id. at 6.)

26 Claim Seven: Petitioner alleges that MCJ must provide a safer way for
 27 inmates to dispose of used razors. After shaving, he alleges, inmates place their
 28 razors in a box, but other inmates can fish them out to reuse them, "spreading

1 hepatitis.” (Id. at 6.)

2 Claim Eight: Petitioner alleges that MCJ must give inmates “milestones”
3 when they finish general education coursework, as is done in state-run prisons. (Id.
4 at 6.)

5 Petitioner alleges that he has not sought an administrative remedy for these
6 issues, except Claim Four. (Id. at 7.) Rather, he “read the district court has [a] case
7 for [MCJ] conditions” and thought that his “petition might help to understand the
8 whole view of these conditions.” (Id. at 7.) He is in MCJ’s “mental facility,”
9 which he believes is the “most clean facility” among MCJ facilities, but he still
10 fears getting sick. (Id. at 4.)

11 III.

12 LEGAL STANDARDS

13 “Federal law opens two main avenues to relief on complaints related to
14 imprisonment: a petition for habeas corpus ... and a complaint under the Civil
15 Rights Act of 1871 ... 42 U.S.C. § 1983.” Muhammad v. Close, 540 U.S. 749, 750
16 (2004). “Challenges to the validity of any confinement or to the particulars
17 affecting its duration are the province of habeas corpus,” while “requests for relief
18 turning on circumstances of confinement may be presented in a § 1983 action.” Id.
19 When success on a petitioner’s claims “would not necessarily lead to his immediate
20 or earlier release from confinement,” those claims do not fall within the “core of
21 habeas corpus.” Nettles v. Grounds, 830 F.3d 922, 935 (9th Cir. 2016) (en banc).
22 If a claim “does not lie at ‘the core of habeas corpus,’” then “it may not be brought
23 in habeas corpus” and instead should be brought in a civil rights complaint. Id. at
24 934 (quoting Preiser v. Rodriguez, 411 U.S. 475, 487 (1973)).

25 In some circumstances, a district court may convert an improperly filed
26 habeas petition into a civil rights complaint. Id. at 935-36. “If the complaint is
27 amenable to conversion on its face, meaning that it names the correct defendants
28 and seeks the correct relief, the court may recharacterize the petition so long as it

1 warns the pro se litigant of the consequences of the conversion and provides an
 2 opportunity for the litigant to withdraw or amend his or her complaint.” Id. at 936
 3 (quoting Glaus v. Anderson, 408 F.3d 382 (7th Cir. 2005)). Some of the
 4 consequences of conversion include:

- 5 • The filing fee in a habeas action is \$5, but the filing fee in a civil rights
 6 action is \$350. Even if granted leave to proceed without *pre-paying* the
 7 filing fee in a civil rights action, a prisoner plaintiff is required to pay the
 8 full amount of the \$350 filing fee by way of deductions from his prison
 9 trust account. See 28 U.S.C. § 1915(b)(1).
- 10 • If, while incarcerated, a prisoner files 3 civil rights complaints that are
 11 dismissed as “frivolous, malicious, or [for] fail[ure] to state a claim upon
 12 which relief may be granted,” the prisoner may not file future actions
 13 without the prepayment of filing fees “unless the prisoner is under
 14 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). There
 15 are different pre-filing exhaustion requirements for habeas petitions and
 16 civil rights complaints. Before filing a habeas petition, the petitioner
 17 generally must exhaust his remedies *in state court* by filing habeas
 18 petitions. Before filing a civil rights complaint, a prisoner plaintiff
 19 generally must exhaust his *administrative* remedies by, for example, filing
 20 prison grievances. See Nettles, 830 F.3d at 932 n.8.

21 IV.

22 DISCUSSION

23 A. Claims One, Two, Three, Five, Six, Seven, and Eight.

24 All of these claims complain directly about a condition of confinement at
 25 MCJ. Per the above-cited authorities, such claims must be raised in a civil rights
 26 complaint instead of a habeas petition like the one Petitioner has filed in this action.

27 B. Claim Four.

28 Claim Four alleges in full:

1 I was sentenced on 4/21/16 then resentenced on 10/18/17, but the
 2 jail's inmate record keeps wrong information that says I was
 3 convicted on 4/12/2023. Although I made grievance and requests
 4 more than 10 times they would not change in order to keep me in the
 5 probation. I am on the parole now. I endorsed one of the copies.
 6 (Pet. at 5.)

7 It is unclear to which "inmate records" Petitioner is referring. The Los
 8 Angeles County Sheriff's website states that Petitioner was "arrested" on April 12,
 9 2023, with an expected release date of January 5, 2024. See Los Angeles County
 10 Sheriff's Inmate Information Center. But according to Petitioner, April 2023 is
 11 when he was transported from state prison to MCJ to finish the portion of his
 12 sentence to be served at a county jail. (Pet. at 3.)

13 Nothing in the Petition alleges that Petitioner is going to spend more time in
 14 custody unless the Los Angeles County Sheriff corrects its records about
 15 Petitioner's conviction date. Petitioner the Sheriff's records seem to agree that his
 16 release date is imminent: January 5, 2024. Without any allegation that failing to
 17 correct the error would violate federal law and extend Petitioner's time in custody,
 18 Claim Four fails to state a federal habeas claim.

19 **C. The Petition is Not Amenable to Conversion to a Civil Rights Complaint.**

20 The Petition is not amenable to conversion to a civil rights complaint for
 21 several reasons. First, Sheriff Luna, the Respondent named in the Petition, likely
 22 would not be a proper defendant in a civil rights complaint about IRC medical care,
 23 commissary pricing, etc. See generally Starr v. Baca, 652 F.3d 1202, 1207 (9th Cir.
 24 2011); Preschooler II v. Clark County Sch. Bd. of Trs., 479 F.3d 1175, 1182 (9th
 25 Cir. 2007).

26 Second, it is not clear that all of the claims are factually related. Multiple
 27 defendants sued on factually unrelated claims might not be properly joined in one
 28 civil rights lawsuit. See Fed. R. Civ. P. 20(a)(2); Coughlin v. Rogers, 130 F.3d

1 1348, 1351 (9th Cir. 1997); George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007).

2 Third, “Petitioner may decide he does not wish to incur the filing fee for a
3 [civil rights] complaint that does not state a claim on its face.” Solano v. California
4 Substance Abuse Treatment Facility, No. 17-cv-2671-RGK (AGR), 2017 U.S. Dist.
5 LEXIS 193862 at *6, 2017 WL 5640920 at *2 (C.D. Cal. Oct. 24, 2017), R&R
6 adopted, 2017 U.S. Dist. LEXIS 193865, 2017 WL 5641027 (C.D. Cal. Nov. 21,
7 2017). Petitioner admits that he has not exhausted his administrative remedies for
8 these claims through MCJ’s grievance system. (Pet. at 7.) Under the Prison
9 Litigation Reform Act, such civil rights claims must be exhausted as a prerequisite
10 to filing a suit in district court. 42 U.S.C. § 1997e(a); Woodford v. Ngo, 548 U.S.
11 81, 89 (2006).

12 V.

13 CONCLUSION

14 For these reasons, the Court orders Petitioner to show cause why the Petition
15 should not be summarily dismissed without prejudice. To discharge this order,
16 Petitioner should do one of the following **before January 19, 2024**:

17 1. File a notice voluntarily dismissing the Petition. Such a voluntary
18 dismissal will not prejudice Petitioner’s ability to file later civil rights complaints
19 raising these claims.

20 2. File a First Amended Petition omitting some claims and/or adding factual
21 allegations to try to state a claim for habeas relief. Any amended petition should
22 bear the same case number, 2:23-cv-08178-JVS-KES, clearly identify the alleged
23 violation(s) of federal law, and explain why granting him relief would necessarily
24 lead to his immediate or earlier release from confinement.

25 3. File a brief explaining why Petitioner disagrees with the discussion in this
26 Order to Show Cause and alerting the Court that he intends to proceed with the
27 Petition as drafted. If Petitioner elects this option, the Magistrate Judge may
28 recommend that the District Judge summarily dismiss the Petition for failure to

1 state a federal habeas claim.

2 **If Petitioner fails to do one of these three things before the deadline, this**
3 **action may be dismissed for failure to prosecute.**

4 If Petitioner is released from custody while this case is pending, he must
5 promptly notify the Court of his new mailing address. If he fails to keep the Court
6 informed of his current mailing address, this action may be dismissed for failure to
7 prosecute. See Local Rule 41-6 (“A party proceeding pro se must keep the Court
8 ... informed of the party’s current address as well as any telephone number and
9 email address. If a Court order or other mail served on a pro se plaintiff at his
10 address of record is returned by the Postal Service as undeliverable and the pro se
11 party has not filed a notice of change of address within 14 days of the service date
12 of the order or other Court document, the Court may dismiss the action with or
13 without prejudice for failure to prosecute.”).

14
15 DATED: December 20, 2023

16 
17 KAREN E. SCOTT
18 UNITED STATES MAGISTRATE JUDGE
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